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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 Christopher A. Jones,

7 Plaintiff,

8 v.

9 Perry Russell,

10 Defendant.

Case No. 2:22-cv-00123-CDS-DJA

Order

11 Before the Court is Plaintiff's motion to compel (ECF No. 45) and Plaintiff's motion to  
12 deem certain requests for admission to be admitted (ECF No. 47). Because the Court finds that  
13 Defendant has fully responded to certain discovery requests, but that Defendant must supplement  
14 certain others, it grants in part and denies in part Plaintiff's motion to compel. Because the Court  
15 finds that Defendant has properly responded to Plaintiff's requests for admission, it denies his  
16 motion to deem admitted.

17 **I. Legal standard.**

18 If a party resists discovery, Federal Rule of Civil Procedure 37(a) authorizes the  
19 requesting party to file a motion to compel. The motion must include a threshold showing that  
20 the requested information is relevant. *See Tsatas v. Airborne Wireless Network, Inc.*, No. 2:20-  
21 cv-02045-RFB-BNW, 2022 WL 74003, at \*2 (D. Nev. Jan. 7, 2022). Discovery must also be  
22 proportional. *See* Fed. R. Civ. P. 26(b)(1). Relevance is a low threshold and merely requires the  
23 possibility of a nexus between the information sought and the claims or defenses of a party.  
24 *Tsatas*, 2022 WL 74003 at \*2. Proportionality requires the court to consider the importance of  
25 the issues at stake in the action, the amount in controversy, the parties' relative access to relevant  
26 information, the parties' resources, the importance of the discovery in resolving the issues, and  
27 whether the burden or expense of the proposed discovery outweighs its likely benefit. Fed. R.  
28 Civ. P. 26(b)(1). The party resisting discovery bears the burden of showing why that discovery

1 should not be permitted because it is irrelevant, overly broad, or unduly burdensome. *Fosbre v.*  
2 *Las Vegas Sands Corp.*, No. 2:10-cv-00765-APG-GWF, 2016 WL 54202, at \*4 (D. Nev. Jan. 5,  
3 2016). To meet this burden, the objecting party must specifically detail the reasons why each  
4 request is objectionable. *Id.*

5 Under Federal Rule of Civil Procedure 36(a)(6), a party requesting that another party  
6 respond to a written request to admit may move to determine the sufficiency of an answer or  
7 objection. “Unless the court finds an objection justified, it must order that an answer be served.  
8 On finding that an answer does not comply with this rule, the court may order either that the  
9 matter is admitted or that an amended answer be served.” Fed. R. Civ. P. 36(a)(6).

## 10 **II. Discussion.**

### 11 Request for Production No. 15:

12 A copy of all Level 1 grievances responded to by Defendant Russell  
13 involving heat related issues/cold in unit 4 from and or between  
Nov. 2020 – June 2021.

14 Defendant initially produced records responsive to this request, which records Plaintiff  
15 argued in his first motion to compel were not responsive. Plaintiff argued that the documents  
16 were at the Informal Level—rather than Level 1—and did not concern Unit 4. Defendant had  
17 explained that, because he no longer works as a warden for the Nevada Department of  
18 Corrections (“NDOC”), NDOC could not search its records by his employee ID. So, instead,  
19 Defendant conducted a “specific detail” search for housing grievances, which would include  
20 heating and cooling grievances. The Court found Defendant’s argument regarding searching by  
21 his employee ID to be persuasive. It also noted that the documents appeared to contain both  
22 Level 1 and Informal Level grievances. But the Court required the parties to meet and confer  
23 because it was unclear whether the documents contained the grievances concerning Unit 4 that  
24 Plaintiff was anticipating the request to encompass.

25 Plaintiff now argues that Defendant has not pointed to any NDOC policy or provided an  
26 affidavit explaining why NDOC could no longer search by his employee ID. (ECF No. 45 at 9-  
27 12). Plaintiff adds that the documents did not contain the information he was anticipating, but  
28 does not elaborate on this argument. (*Id.* at 9). Defendant responds that his search of the

1 documents encompassed all levels of grievance, not just Level 1. (ECF No. 46 at 5). Defendant  
2 adds that, when an NDOC grievance coordinator enters a grievance related to HVAC issues, that  
3 grievance should be placed in the category of housing issues, which category of documents  
4 Defendant searched and provided to Plaintiff. (*Id.*). Defendant explains that, if the grievance  
5 coordinator saved the grievance under a different category, Defendant could not find it by  
6 searching for housing grievances. (*Id.*). Defendant adds that he cannot use his former warden's  
7 access ID to search documents and that there is no other way than to search by category to find  
8 the documents responsive to Plaintiff's request. (*Id.*). In reply, Plaintiff states that he stands on  
9 his arguments and asserts that the Court should require NDOC to provide an affidavit from a Rule  
10 30(b)(6) witness explaining the grievance retrieval process. (ECF No. 49 at 4-5).

11 Here, the Court finds that Defendant has responded to Plaintiff's request to the best of his  
12 abilities. And, while Plaintiff argues that Defendant has not provided an affidavit to that effect,  
13 the Court finds Defendant's explanation in his briefing to be sufficient. Indeed, by drafting and  
14 signing the response, Defendant's attorney has certified that, to the best of their abilities, "the  
15 factual contentions have evidentiary support." Fed. R. Civ. P. 11(b)(3). So, the Court finds an  
16 additional affidavit unnecessary here. The Court thus denies Plaintiff's motion to compel  
17 regarding RFP 15.

18 Request for Admission No. 3:

19 As a Warden at NNCC, NRS 209.161 applied to you, admit or deny.

20 Request for Admission No. 6:

21 As set out in part at NRS 209.161(3), you were responsible for the  
22 care of the Plaintiff during the times relevant to this action during  
your time as NNCC Warden. Admit or deny.

23 The Court, in initially addressing these requests for admission, found that Defendant did  
24 not properly respond to RFAs 3 and 6 and required Defendant to serve an amended answer to the  
25 RFAs. Plaintiff asserts in his motion to compel that he has not received any amended answers  
26 from Defendant. (ECF No. 45 at 3). Defendant asserts in response that he has served Plaintiff  
27 with the amended admissions. (ECF No. 46 at 2). Plaintiff replies that he did not receive the  
28

1 admissions until Defendant filed his response to Plaintiff's motion to compel and argues that the  
2 amendment is still evasive. (ECF No. 49 at 2).

3 The Court denies Plaintiff's motion to compel Defendant to provide an amended answer  
4 to these requests and denies Plaintiff's motion to deem these requests admitted. Defendant has  
5 provided Plaintiff with amended responses to these requests. And the Court does not find those  
6 amended responses to be evasive. While Plaintiff asserts that he did not receive them until after  
7 he filed his motion to compel, the Court notes that the amended responses attached to  
8 Defendant's response to Plaintiff's motion to compel is dated April 10, 2024. Without further  
9 explanation from either side, the Court declines to rule one way or the other about the timing of  
10 the amendment. However, because the Court finds there is nothing further to compel and no  
11 basis to deem the responses admitted under Federal Rule of Civil Procedure 36(a)(6), it denies  
12 Plaintiff's motion to compel in part regarding these requests and denies his motion to deem  
13 admitted.

14 Interrogatory No. 22:

15 Please provide the full name of the inmate housed with Adam  
16 Hawthorne NDOC No. 67761 in unit 4 A wing cell #15 at NNCC  
between February 2021 and March 2021 known as J. WHITE.

17 Interrogatory No. 23:

18 Please provide the back number for the inmate noted above as J.  
WHITE.

19 Interrogatory No. 24:

20 Please provide the present whereabouts for said J. WHITE.

21 Interrogatory No. 25:

22 Please provide any and all relevant release information (if  
23 applicable) for said J. WHITE including, [sic] addresses and any and  
24 all information that could to information to [sic] locate the  
individual in free society.

25 The Court previously denied Plaintiff's motion to compel regarding these interrogatories  
26 and required the parties to meet and confer. Defendant had initially objected to each of the  
27 interrogatories with the following objection and response:  
28

1                   Objection. Defendant objects to Interrogatory No. [22-25] as it calls  
2                   for release of confidential information pertaining to an inmate which  
3                   Plaintiff/the public is not permitted to access under Administrative  
4                   Regulation 569.

5                   Defendant provided additional information “as a courtesy” and sent Plaintiff a list of all  
6                   inmates incarcerated with the first initial “J” and the last name “White” so that Plaintiff could  
7                   determine the individual’s full name. The Court required the parties to meet and confer regarding  
8                   whether the list was sufficient for Plaintiff’s discovery purposes.

9                   In his current motion to compel, Plaintiff points out that Defendant did not make any  
10                  changes after their meet and confer, but decided to stand on Defendant’s initial objections. (ECF  
11                  No. 45 at 2). Plaintiff argues that Defendant’s objections based on Nevada Department of  
12                  Corrections Administrative Regulation (“AR”) 569 are not appropriate to withhold further  
13                  responses because confidentiality is not the same as a privilege. (*Id.* at 5-8). Defendant responds  
14                  that the list is minimally responsive to Interrogatories 22 and 23 and that Defendant is under no  
15                  duty to act as Plaintiff’s private investigator. (ECF No. 46 at 2-3). Defendant asserts that inmates  
16                  in federal prison have their personal information protected from disclosure under 28 C.F.R.  
17                  § 513.34 and that “[t]here is no justification for federal inmates to have more protections in  
18                  discovery than state inmates, especially since the federal courts must give more deference to state  
19                  penal institutions.” (*Id.* at 4).

20                  Rule 26(b) of the Federal Rules of Civil Procedure governs the scope of discovery.  
21                  *Santos v. Baca*, No. 2:11-cv-01251-KJD-NJK, 2015 WL 7307054, at \*1–2 (D. Nev. Nov. 17,  
22                  2015). That rule provides that the material sought in discovery must be nonprivileged. Fed. R.  
23                  Civ. P. 26(b)(1). Federal law controls questions of privilege in federal question cases such as the  
24                  instant case. *NLRB v. N. Bay Plumbing, Inc.*, 102 F.3d 1005, 1009 (9th Cir. 1996). Strong policy  
25                  considerations underlie this choice of law, as other courts have explained:

26                         It ... would make no sense to permit state law to determine what  
27                         evidence is discoverable in cases brought pursuant to federal statutes  
28                         whose central purpose is to protect citizens from abuses of power by  
                            state and local authorities. If state law controlled, state authorities  
                            could effectively insulate themselves from constitutional norms  
                            simply by developing privilege doctrines that made it virtually

1 impossible for plaintiffs to develop the kind of information they  
2 need to prosecute their federal claims.

3 *Kelly v. City of San Jose*, 114 F.R.D. 653, 656 (N.D. Cal. 1987).

4 As a result, state law, including state regulations and administrative codes, does not  
5 control the applicability of privilege in federal question cases. *See Hooks v. Bannister*, No. 3:12-  
6 cv-00682, 2014 WL 6772989, at \*6 (D. Nev. Dec. 2, 2014). In contrast to many state law  
7 privileges, “[f]ederal law governing privilege has not been codified.” *Id.* Rather, privileges have  
8 been developed at common law. *Id.* (citing Fed. R. Evid. 501). AR 569 governs the  
9 confidentiality of inmate records. Notably, however, AR 569.02(5) provides a list of information  
10 which may be disclosed to the public, including: (1) name used by the inmate at the time of  
11 incarceration; (2) department identification number; (3) commitment offenses; (4) county of  
12 commitment; (5) date of incarceration; (6) sentence structure; (7) any pending criminal court  
13 action on record; (8) current institutional location (except safe keepers and boarder inmates);  
14 (9) projected dates of release on parole or discharge; and (10) parole board actions.

15 Here, the Court finds that J. White’s name, inmate number, and release information is  
16 discoverable. As a preliminary matter, it is not clear if 28 C.F.R. § 513.34 would apply to  
17 preclude Defendant from responding to these interrogatories. While 28 C.F.R. § 513.34 provides  
18 limitations on information that the Federal Bureau of Prisons can release about its inmates, that  
19 provision appears to apply only to the Federal Bureau of Prisons. *See* 28 C.F.R. § 513.30.  
20 Plaintiff is requesting records from the Northern Nevada Correctional Center, which is a state, not  
21 a federal institution. And although Defendant makes the policy argument that state inmates  
22 should not have less protections than federal inmates, Defendant has not otherwise explained how  
23 this regulation applies to prevent him from responding to these interrogatories, especially  
24 considering AR 569.

25 As outlined above, AR 569 does not control the Court’s analysis, although it does inform  
26 it. The Court recognizes the confidentiality concerns that Defendant has invoked and the  
27 importance of maintaining that confidentiality, particularly when it comes to disclosing this type  
28 of information to other inmates. But, on the other hand, Plaintiff is no longer an inmate and is

1 now a member of the public. And AR 569 provides for the release of certain information to  
2 members of the public. Indeed, much of this information is publicly accessible through the  
3 Nevada Department of Corrections' inmate lookup system, a screenshot of which Defendant  
4 provided to Plaintiff.

5 The Court concludes that Defendant must provide the name, department identification  
6 number, and projected dates of release on parole or discharge for J. White under AR 569.02(5).  
7 However, the Court will not require Defendant to provide the present whereabouts for J. White,  
8 his address, or other information to help Plaintiff locate J. White if he is indeed released. As  
9 Defendant points out, he is not Plaintiff's private investigator and is not required to find  
10 information that is not readily within his custody or control. The Court thus grants Plaintiff's  
11 motion to compel regarding Interrogatory Nos. 22, 23, 24, and 25 in part and denies it in part.  
12

13 **IT IS THEREFORE ORDERED** that Plaintiff's motion to compel (ECF No. 45) is  
14 **granted in part and denied in part** as outlined herein.

15 **IT IS FURTHER ORDERED** that Plaintiff's motion to deem admitted (ECF No. 47) is  
16 **denied.**

17  
18 DATED: June 25, 2024



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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE